

On January 20, 2003 appellant, then a 69-year-old budget analyst, filed an occupational disease claim alleging that she developed a back condition while in the performance of duty.

In support of her claim, appellant submitted reports from Dr. Michael F. Burns, a Board-certified orthopedic surgeon, dated March 23 and June 8, 2000. Dr. Burns treated her for right wrist carpal tunnel and a right shoulder rotator cuff tear. He advised that appellant's work activities included repetitively opening doors and lifting files and had aggravated her condition. Reports from Dr. George A. Paletta, Jr., a Board-certified orthopedist, from April 18, 2000 to August 21, 2001, noted treating appellant for bilateral knee pain and left shoulder pain. He diagnosed exacerbation of chronic rotator cuff tendinitis and impingement syndrome related to her job activities. In a report dated November 20, 2002, Dr. Patrick A. Hogan, a Board-certified psychiatrist and neurologist, treated appellant for chronic low back pain. He diagnosed low back pain without a radicular component. A magnetic resonance imaging (MRI) scan of the lumbar spine dated November 23, 2002 revealed levoscoliosis, spurring, disc desiccation from L1 to L5, a disc bulge at L3-4 and osteoarthritis changes in the apophyseal joints at L4-5. In a January 2, 2003 report, Dr. David G. Kennedy, a Board-certified neurosurgeon, noted that appellant's work duties included moving file cabinets and lifting files which caused a severe onset of low back pain. He diagnosed sacroiliac dysfunction and recommended trigger point injections.

On July 2, 2003 the Office accepted appellant's claim for sacroiliac dysfunction.

On April 28, 2004 appellant filed a claim for a schedule award. She submitted reports from Dr. Rachel Feinberg, a family practitioner, dated October 23, 2003 to February 5, 2004. Dr. Feinberg treated appellant for hip and low back pain. On January 29 and February 5, 2004 she performed sacroiliac joint injections and recommended physical therapy. On January 15, 2004 Dr. Barry I. Feinberg, a family practitioner, noted appellant's complaints of mid and low back pain with bending and noted improvement with trigger point injections.

In a May 4, 2004 letter, the Office advised appellant of the evidence needed to establish her claim for a schedule award. It requested that she submit a report from her physician with regard to any impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>1</sup> (A.M.A., *Guides*).

An April 22, 2004 report from Dr. Kennedy noted treating appellant since January 2, 2003 and diagnosed sacroiliac joint dysfunction, left shoulder impingement and cervical and lumbar spondylosis. He advised that she has received treatment from Dr. Barry Feinberg and made gradual improvement; however, appellant would require future medical treatment. In a January 5, 2005 report, Dr. Robert P. Poetz, an osteopath, noted appellant's history and treatment. He diagnosed osteoporosis and lumbar degenerative disc preexisting and lumbar strain with exacerbation of osteoporosis and degenerative disc disease. Dr. Poetz opined that appellant sustained 15 percent preexisting impairment of the whole person due to her lumbar spine and 20 percent impairment of the whole person due to her work-related injury of April 3, 2001.

On March 30, 2005 the Office referred the medical file to an Office medical adviser. In a report dated April 20, 2005, the Office medical adviser noted that appellant's condition was accepted for sacroiliac dysfunction. He stated that Dr. Poetz's January 5, 2005 report provided a disability rating for conditions affecting the lumbar spine; however, these conditions were not

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<sup>1</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

accepted by the Office as work related. The Office medical adviser further indicated that disability ratings for the lumbar spine could not be derived using the A.M.A., *Guides*. He concluded that there was no basis for a schedule award due to the conditions accepted by the Office.

By decision dated May 13, 2005, the Office denied appellant's claim for a schedule award.

In a letter dated May 2, 2006, appellant requested reconsideration. She submitted a November 22, 2005 letter she wrote to her representative asserting that her other conditions should have been accepted by the Office. Appellant believed that "the conditions omitted from the approval of the claim resulted in the denial of my claim for compensation" and requested that the claim be expanded to include the omitted conditions. She submitted a duplicate copy of the November 22, 2002 MRI scan of the lumbar spine and duplicate copies of reports from Dr. Kennedy dated April 22, 2004 and Dr. Poetz dated January 5, 2005. In a treatment note prepared by Dr. Rachel Feinberg on November 11, 2003, she noted appellant's complaints for sacral pain. She advised that since appellant's last visit the pain had been isolated to a smaller size and findings upon examination revealed smaller internal rotation of the right hip and sacrum. Dr. Rachel Feinberg performed a trigger point injection which decreased the pain and rotation.

By a decision dated June 14, 2006, the Office denied appellant's reconsideration request on the grounds that it neither raised substantive legal questions, nor included new and relevant evidence and was, therefore, insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT**

Under section 8128(a) of the Federal Employees' Compensation Act,<sup>2</sup> the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,<sup>3</sup> which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
- (ii) Advances a relevant legal argument not previously considered by the (Office); or
- (iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b).

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.<sup>4</sup>

### ANALYSIS

Appellant requested reconsideration of a May 13, 2005 Office decision that denied her claim for a schedule award. However, her May 2, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

Appellant's request for reconsideration referenced a letter she sent to her representative dated November 22, 2005, in which she contended that her claim should have been accepted for other conditions. She noted MRI scan findings and diagnoses by Dr. Kennedy and Dr. Poetz to support her contention. Appellant believed that these conditions should have been accepted by the Office as work related and this lack of acceptance resulted in the denial of her schedule award claim. However, her letter did not show how the Office erroneously applied or interpreted a point of law, nor did it advance a point of law or fact not previously considered by the Office. The Office had previously considered the MRI scan and the reports of Dr. Kennedy and Dr. Poetz's in relation appellant's claim. Appellant did not set forth a particular point of law or fact that the Office had not considered or establish that it had erroneously interpreted a point of law with regard to the medical evidence of record. Consequently, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant submitted medical reports from Dr. Kennedy dated April 22, 2004 and Dr. Poetz dated January 5, 2005 and an MRI scan of the lumbar spine dated November 23, 2002. However, this evidence is duplicative of evidence already of record<sup>5</sup> and previously considered by the Office in its May 13, 2005 decision. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Appellant submitted a new report from Dr. Rachel Feinberg dated November 11, 2003 which noted her complaints of sacral pain. Dr. Rachel Feinberg noted findings upon physical examination and her opinion on appellant's status. However, this report is duplicative to Dr. Rachel Feinberg's previously submitted reports dated October 23, 2003, January 29 and February 5, 2005 which were considered by the Office in its May 13, 2005 decision and found insufficient.<sup>6</sup> This report is also not relevant as it fails to address appellant's claim for a schedule

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<sup>4</sup> 20 C.F.R. § 10.608(b).

<sup>5</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

<sup>6</sup> *Id.*

award or otherwise address how any employment-related condition may have caused impairment to a scheduled member of the body. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review.

Because appellant did not show that the Office erroneously applied or interpreted a point of law, advance a point of law or fact not previously considered by the Office, submit relevant and pertinent evidence not previously considered by the Office, the Office properly determined that she was not entitled to a review of the merits of her claim.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for reconsideration.<sup>7</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 14, 2006 is affirmed.

Issued: January 9, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).